Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09508/2018

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 4 June 2019	**On 11 June 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

IBRAHIMA [D]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Capel, instructed by Duncan Lewis & Co. solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who claims to be a citizen of Guinea but has been found to be a citizen of Sierra Leone, was born on 2 October 1994. He first entered the United Kingdom in or about November 2010. He claimed asylum in 2011 but his claim was refused. A subsequent appeal was dismissed on 7 October 2011. The appellant became appeals rights exhausted at the end of the 2011. The appellant has made fresh submissions on a number of occasions but these submissions were rejected without a right of appeal. Proceedings for judicial review brought by the appellant were terminated by consent in May 2018, the respondent agreeing to reconsider his decision to refuse further representations as a fresh claim. On 18 July

2018, the appellant's further submissions were refused but were deemed to be a fresh claim attracting a right of appeal to the First-tier Tribunal. The First-tier Tribunal, in a decision promulgated on 14 March 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. At the initial hearing at Bradford on 4 June 2019, I informed the representatives that I intended to set aside the decision of the First-tier Tribunal and return the appeal to that Tribunal to remake the decision. I gave brief reasons at the hearing and I provide my reasons in greater detail.

3. The judge in the First-tier Tribunal had to consider the application of *Secretary of State for the Home Department v D (Tamil)* [2002] UKIAT 00702 *. The Tribunal which had dismissed the appeal on 7 October 2011 had made findings in respect of the appellant's credibility as a witness. In part, the fresh representations made by the appellant and which have led to the current litigation relied upon medical expert evidence by which the appellant sought to provide an explanation for the inconsistent evidence which he had given before the 2011 Tribunal and which led it to find that he was an unreliable witness. In addition, the appellant had obtained country expert reports which questioned the 2011 Tribunal's conclusions as regards the appellant's nationality.

4. I find that the First-tier Tribunal in its decision of March 2019 erred in its application of *D (Tamil)* (otherwise known as *Devaselaan*). The judge has set out *in extenso* the guidance provided in *Devaseelan* indicating the way in which new evidence should be treated following findings of fact by a previous Tribunal which have not been successfully challenged. The judge in the instant decision at [35] found that 'there is simply no medical evidence sufficient to persuade me that any proper assessment can presently be made concerning the appellant's psychological state at the date of the previous appeal hearing [i.e. in 2011].' At [37], the judge went on to say:

> "There might be some merit in the basis of the appeal that Ms Capel seeks to advance to the effect that the appellant's psychological condition may have had an influence upon the reliability of his evidence, if this was a case of failures of recollection or confusion. However, I have to see this in a context where the appellant, regardless of whether he had himself practised deceit to procure a false passport and deceptive entry into the United Kingdom was, I have no doubt whatsoever, a willing party thereto. In saying that I keep in mind that in November 2010 he was 16 years of age; not an adult, but old enough to know that forgery and falsehood was being used to his advantage."

5. This passage is problematic. First, the judge appears to have overlooked the fact that the new medical evidence did indeed seek to explain 'a case of failures of recollection or confusion.' Secondly, without engaging at all with the medical evidence, the judge has, in effect, ignored it or attached

no weight to it because he has already made up his mind that the appellant, a 16-year-old boy when he entered the United Kingdom, was a willing participant in the 'forgery and falsehood' being employed by others to the appellant's advantage. It does not necessarily follow that, because the appellant may have been aware that deceit had been employed to gain him entry to the United Kingdom, any new medical evidence would inevitably have nothing of relevance to say about the appellant's state of mind at the time he made his claim to the Secretary of State or subsequently at the 2011 appeal hearing. Moreover, without engaging with it at all, the judge was, in my opinion, in no position to declare that no medical evidence could cast light upon the appellant's mental state at some date in the past. The judge erred in law by failing to engage at all with the new medical evidence for the reasons which he has given.

6. In addition to the medical evidence, the appellant sought to rely upon expert country evidence from Dr Anita Schroven and Karen O'Reilly. Rather than engage with that evidence in accordance with the principles set out in *Devaseelan*, the judge rejected it entirely and without any consideration of its contents. He appears to have done so because he believed that it was wrong in principle to admit opinion evidence the 'sole purpose of which is designed to discredit previously made judicial findings of fact.' I do not consider it was open to the judge not to engage with this evidence entirely; rather, he should have analysed it holistically with all the other evidence, approaching that task assisted by the guidance provided by *Devaseelan*. By failing to do so, the judge erred in law.

7. The judge's errors penetrate to the heart of his findings on credibility and, as a consequence, there will need to be a determination of the appeal *de novo.* Whilst this is inevitable, it is also unfortunate given the very considerable length of time which this appellant has spent in the appeal system. A hearing *de novo* is a task better performed in the First-tier Tribunal to which the appeal is now returned for that Tribunal to remake the decision at or following a hearing.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 14 March 2019 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Jones QC) for that Tribunal to remake the decision.

Signed Date 4 June 2019

Upper Tribunal Judge Lane